

Civil Action No. 5:22-cv-05055-JFM

\*admitted pro hac vice

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Inhance Technologies LLC (Inhance) respectfully moves this Court to dismiss the Intervenor-Plaintiffs' Complaint, ECF No. 36, which has been brought under the citizen-enforcement provision of Section 20(b)(1)(B) of the Toxic Substances Control Act (TSCA).

Intervenor-Plaintiffs' Complaint is ancillary to and raises identical claims as the Government's Complaint, ECF No. 1, and it should be dismissed for the same reasons. Inhance therefore incorporates by reference the arguments made in its briefing on its pending motion to dismiss. ECF Nos. 10-1, 27. As noted therein, the claims in this lawsuit overlap with issues presently before EPA in a parallel administrative proceeding, during which the agency is expected to determine what, if any, conditions should attach to Inhance's fluorination process. Resolution of that administrative proceeding could very well moot this lawsuit. And if it does not, allowing both proceedings to run in parallel could subject Inhance to inconsistent governmental positions and judicial outcomes. Intervenor's Complaint also fails to state a claim under Rule 12(b)(6). TSCA's "significant new use" provision applies only to "new" uses—not preexisting ones like the one at issue here.

For these reasons, and those set forth in the referenced briefs, the Court should dismiss the Complaint.

Respectfully submitted,

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Dated: May 24, 2023

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